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TRANSCRIPT OF PROCEEDINGS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAR 3 - 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

IN THE MATTER OF:

Charleston, West Virginia

PR DOCKET NO. 93-231

DATE OF HEARING: February 8, 1994

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Washington, D.C. 20554

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MAR 8 - 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

PR DOCKET NO. 93-231

In the matter of:

CAPITOL RADIOTELEPHONE COMPANY, INC.
a/k/a CAPITOL RADIOTELEPHONE, INC.
or CAPITOL RADIO TELEPHONE, INC.
d/b/a CAPITOL PAGING AND
RAM TECHNOLOGIES, INC.

Charleston, West Virginia

The above-entitled matter came on for hearing pursuant to
Notice before Judge Joseph Chachkin, Administrative Law Judge,
at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 3,
on Tuesday, February 8, 1994 at 9:33 a.m.

APPEARANCES:

On behalf of Capitol Radiotelephone, Inc.:

KENNETH E. HARDMAN, Esquire
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Washington, D.C. 20037

On behalf of RAM Technologies, Inc.:

FREDERICK JOYCE, Esquire
Joyce and Jacobs
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Washington, D.C. 20037

On behalf of Private Radio Bureau:

Y. PAULETTE LADEN, Esquire
CAROL FOX FOELAK, Esquire
2025 M Street, N.W.
Suite 7212
Washington, D.C. 20554

I N D E X

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
ARTHUR K. PETERS				
By Mr. Hardman	1058		1258	
By Mr. Joyce		1119		1269
By Ms. Foelak		1244		1267 1291

E X H I B I T S

<u>Exhibits</u>	<u>Identified</u>	<u>Received</u>	<u>Rejected</u>
CAP Exhibit No. 23		1083	
RAM Exhibit No. 4	1160		
Hearing began: 9:33 a.m.	Hearing Ended: 5:15 p.m.		
Lunch Break Began: 12:43 p.m.	Lunch Break Ended: 1:55 p.m.		

1 P R O C E E D I N G S

2 JUDGE CHACHKIN: On the record.

3 MR. HARDMAN: At this time, Your Honor, Capitol
4 would like to interrupt the cross-examination of Mr. Raymond
5 and call to the -- as its witness a Mr. Arthur K. Peters.

6 JUDGE CHACHKIN: All right. Mr. Peters?
7 Whereupon,

8 ARTHUR K. PETERS
9 was called as a witness and, after having first been duly
10 sworn, was examined and testified as follows:

11 JUDGE CHACHKIN: Be seated. State your name and
12 address for the record, please.

13 MR. PETERS: My name is Arthur K. Peters and my
14 address is 7020 Northwest 91st Boulevard, Gainesville, Florida
15 32605.

16 MS. LADEN: Your Honor, pardon me for interrupting.
17 I had a preliminary matter.

18 JUDGE CHACHKIN: Go ahead.

19 MS. LADEN: I was wondering whether -- pardon me,
20 whether Capitol intended to call Mr. Stone. There was some
21 discussion about that yesterday and we wanted -- you indicated
22 that you would not order him to be produced when we started
23 out, but that you might take the matter up again on the basis
24 of the testimony that there has been here. We would like to
25 renew our request to have him produced.

1 JUDGE CHACHKIN: For what purpose?

2 MS. LADEN: Your Honor, we'd like to ask him, as we
3 indicated the first day of the hearing, we'd like to ask him
4 about an incident that happened during the inspection that he
5 was present for where the test setup was deleted. But also
6 this week, during this hearing, there have also emerged
7 several other questions that we need to ask him. We need to
8 determine whether he was the source of the list of
9 subscribers. There's an issue here that is related to a
10 misrepresentation in relation to the lists of subscribers that
11 Capitol has provided, and we'd like to ask him whether he
12 provided the list which is at PRB Exhibit 5. I expect him to
13 testify that he did, Your Honor, but, frankly, I don't know.
14 He's the President. He's the owner of Capitol. Also, there's
15 been some testimony about the setup -- the chaining for the,
16 the so-called retransmissions and we would like to ask Mr.
17 Stone what he knows about the, the retransmissions.

18 MR. HARDMAN: Your Honor?

19 JUDGE CHACHKIN: Yes.

20 MR. HARDMAN: If the Government is interested in
21 what the facts are, I mean, I can answer the Government's
22 questions and we can be happy to stipulate. Number one, the
23 -- Mr. Stone knows nothing about those lists. I mean, this is
24 a level of detail and transaction during the inspection that
25 he was not a party to. If anyone would know who produced the

1 list -- the lists, Mr. Harrison and Mr. Raymond who took the
2 inspectors around and handled the transaction have been
3 produced and -- for example, Mr. Harrison testified that the,
4 the first page of that list, that was his secretary's
5 handwriting and that the documents were produced at the -- as
6 far as he knew at the Huntington office at a time when no one
7 else was present. So really there's no reason to believe and,
8 for what it's worth, I can tell you Mr. Stone doesn't know
9 anything about that.

10 JUDGE CHACHKIN: He did not produce the lists and he
11 has no knowledge of who produced the lists?

12 MR. HARDMAN: No. No.

13 JUDGE CHACHKIN: And are you telling me Capitol has
14 no knowledge who produced the lists?

15 MR. HARDMAN: Well, the people who would be in a
16 position to know, namely Mr. Raymond who is still on the stand
17 and can be asked further if there's some question about it and
18 Mr. Harrison who was on the stand formerly, but my
19 recollection of his testimony and, you know, these are subject
20 to check, but my recollection of the testimony is they can't
21 recall who did it. They recognize certain aspects about the
22 documents, what it is not, but, you know, I'll be happy to let
23 them -- they certainly have every right --

24 JUDGE CHACHKIN: Well, Mr. Raymond is still a
25 witness so the Bureau can certainly ask him.

1 MR. HARDMAN: He's still a witness, so --

2 JUDGE CHACHKIN: Yes.

3 MS. LADEN: Yes, Your Honor, we intend to. My
4 recollection of Mr. Raymond's testimony in response to
5 questions by Mr. Joyce is that he did not know the source of
6 the lists, but I did intend to pursue it further.

7 JUDGE CHACHKIN: All right. Well, apparently Mr.
8 Stone knows nothing about the list. What was the other
9 question you wanted to pursue?

10 MS. LADEN: Your Honor, he was present during,
11 during the inspection when -- and left the room just before
12 the test setup was deleted. I need to ask him whether he
13 ordered the test setup to be deleted. He is the owner and I
14 believe the President of Capitol, Your Honor, and I need to --
15 and there has been testimony here about the chaining -- the
16 retransmissions. I need to ask him whether he ordered those
17 retransmissions to be setup.

18 MR. HARDMAN: Your Honor, I've asked Mr. Raymond on
19 direct whether he has any knowledge of that whole phenomenon
20 and he doesn't. Now, if anyone -- he is senior management.
21 This is his baby. If anyone in the company had -- especially
22 at the senior level, did something, Mr. Raymond would have
23 knowledge of it and he denies having any such knowledge. Now,
24 again, I can tell you that Mr. Stone, for what it's worth,
25 doesn't know what a chain is and I don't, I don't think he

1 | could program a pager if his life depended on it. So the --
2 | and if it's material, which I don't know why it is, but if
3 | it's material, I can find out. If the -- if he ordered the
4 | test setup deleted, I'll be happy to stipulate. The point is,
5 | Your Honor, that the man owns at least most of the company and
6 | he -- unless there's really a good reason to subject him to
7 | this, I didn't see any reason to do so and the, the limited --
8 | well, certainly as far as I know he has no information which
9 | is material to this case that hasn't already been covered
10 | amply in other witnesses and information produced by Capitol.
11 | And to -- and when I found out yesterday that he might be
12 | converted to a Government witness, the limited point that he
13 | was going to be produced for just simply is not worth it.
14 | There's ample evidence in the record as to what RAM's
15 | corporate decision was regarding keeping Capitol off 152.480,
16 | so it just really was not worth it.

17 | JUDGE CHACHKIN: But what about the one point that
18 | the Bureau has raised which the Bureau -- well, which the
19 | Revocation Order seems to deal with at some length is the fact
20 | that Mr. Stone was present when the test setup -- when the
21 | inspectors were there and the suspicion that he had something
22 | to do with deleting the test setup?

23 | MR. HARDMAN: Well, I fail to understand the
24 | materiality of that, whether he did or whether he didn't. If
25 | the Government wants to know, I'll be happy to find out and

1 stipulate that either he did or he didn't, but if he -- take
2 the worst case scenario. What if he did? So what?

3 JUDGE CHACHKIN: I don't know.

4 MR. HARDMAN: So what does it prove?

5 JUDGE CHACHKIN: I don't know what the Bureau thinks
6 it proves.

7 MS. LADEN: Well, as Your Honor indicated, it's
8 mentioned in the Designation Order and it suggests, and I
9 don't want to make any accusations, Your Honor, but I think
10 the Designation Order as well as the Inspection Report
11 suggests that this might have been an attempt to hide
12 something. An intent to conceal might be shown by that.

13 JUDGE CHACHKIN: Conceal what?

14 MS. LADEN: Well, Your Honor, it would show an
15 intent to conceal wrongdoing and --

16 JUDGE CHACHKIN: How? How? How would it show an
17 intent to conceal wrongdoing if the test setup was deleted?

18 MS. LADEN: If the test setup, if the test setup was
19 an automatic that went for 24 hours a day every day for
20 months, then deleting the test setup might conceal evidence.

21 MR. HARDMAN: Your Honor, the evidence on exactly
22 what the pattern of the tones were is conflicting. The
23 Government has, has offered the testimony of its inspectors
24 and the report and that is one version. We have another
25 characterization by witnesses employed by RAM. Okay?

1 Mr. Harrison who, you know, did the testing was produced for
2 the stand. His characterization is different. Except for one
3 night when he said the test setup was left on overnight he
4 denies having this go 24 hours a day. Now, the other evidence
5 that's relevant on this is the -- and I asked this a couple of
6 times from the inspectors when they were on the stand, is --
7 the substance of their testimony on this point was when they
8 came to inspect the testing stopped. Period. And we're not
9 disputing that, nor did -- nor is there any basis for drawing
10 some sort of sinister inference from that fact and, in
11 particular, I most profoundly disagree with counsel that
12 whether Mr. Stone ordered it or did not order it, and I don't
13 know whether he did or he didn't, but either way it doesn't,
14 to me, imply anything other than when the inspectors came the
15 testing stopped.

16 MS. LADEN: Your Honor, we'll never know if the
17 confusion about the test setup would have been -- would have
18 existed if the inspectors would have been able to look at it.

19 JUDGE CHACHKIN: What, what are you talking about
20 when you talk about the test setup?

21 MS. LADEN: Well, I'm not exactly sure, Your Honor,
22 because I'm not a technical person, but my understanding is
23 that the computer is programmed to do an automatic test.

24 JUDGE CHACHKIN: Well, why don't you ask Mr. Raymond
25 that if that's the case? You haven't developed that from

1 Mr. Raymond.

2 MR. HARDMAN: Your Honor, I would --

3 MS. LADEN: Mr. Raymond wasn't present when the
4 incident occurred.

5 JUDGE CHACHKIN: But he knows how the computer
6 works.

7 MS. LADEN: We -- there has been testimony as to how
8 the computer works. My question is -- I want to find out
9 whether Mr. Stone deleted the test setup before the inspectors
10 could look at it, the test setup for that moment for that day,
11 Your Honor.

12 MR. HARDMAN: Your Honor, the testimony in this case
13 from Mr. Harrison was -- well -- no, I'm sorry. Go back to
14 when the inspectors were on the stand and I asked these
15 questions specifically, whether in response to the inspector's
16 question Mr. Harrison was able to reconstruct the test setup
17 on the computer. He testified that he did. I asked him if
18 they had any reason to believe that there was information
19 about the testing that was deleted or concealed from them as a
20 result of that reconstruction. They said there wasn't. So I
21 --

22 JUDGE CHACHKIN: If that's the case, what's the,
23 what's the problem?

24 MS. LADEN: Well --

25 JUDGE CHACHKIN: If it was reconstructed and the

1 inspectors felt that there was nothing that was hidden from
2 them, then what's the problem? I don't understand.

3 MR. HARDMAN: I don't think that was the testimony.

4 MS. LADEN: I don't believe that --

5 JUDGE CHACHKIN: I think there was that testimony,
6 that it was reconstructed and they didn't see anything that --

7 MS. LADEN: It's impossible to know what was in the
8 original setup because it has been deleted. It's impossible
9 to know whether the reconstructed setup --

10 JUDGE CHACHKIN: Well, even assume it was deleted.
11 If you -- is there someone -- you want to know who could tell
12 you about what the original testing showed? Is that --

13 MS. LADEN: I don't think anyone could tell us that.
14 I would like to --

15 JUDGE CHACHKIN: Well, if you know that it was
16 deleted, how is that going to help you to find out what was in
17 there that was different than the reconstruction?

18 MS. LADEN: It's not, Your Honor. What I'm trying
19 to find out is whether someone did something to conceal that
20 evidence before he --

21 JUDGE CHACHKIN: Conceal what evidence?

22 MS. LADEN: The evidence of the test setup.

23 JUDGE CHACHKIN: But the fact of the matter, if the
24 reconstruction was exactly the same as to what was in the
25 computer --

1 MS. LADEN: But we don't know that, Your Honor.

2 JUDGE CHACHKIN: Well, then you're going to have to
3 ask someone to find out what was in the computer initially.
4 If there was nothing in the computer that's different than the
5 reconstruction, then what's the problem? You haven't
6 developed that there was something that was different.

7 MS. LADEN: We don't know.

8 MR. HARDMAN: And I can guarantee, Your Honor, that
9 the --

10 JUDGE CHACHKIN: There were witnesses to ask if you
11 want to find out what was in the, what was in the computer.

12 MR. JOYCE: I thought the Bureau was trying to drive
13 a motive, Your Honor. Why -- if there is nothing wrong with
14 24 hour excessive testing on a --

15 MR. HARDMAN: Your Honor, I object to that
16 characterization.

17 JUDGE CHACHKIN: There was no evidence of 24 hour
18 testing. The only evidence from Mr. Harrison said there was
19 one --

20 MR. JOYCE: He said they --

21 JUDGE CHACHKIN: What proof did they have of it?

22 MR. JOYCE: They were monitoring from Sunday through
23 Thursday. We have that testimony. At midnight the testing
24 was going on, first thing in the morning the testing was going
25 on.

1 JUDGE CHACHKIN: Well, that doesn't make 24 hours.
2 If it's going on at midnight and it's going on the next
3 morning doesn't make it 24 hours as far as I know.

4 MR. JOYCE: Sunday through Thursday the testimony
5 was, Your Honor.

6 JUDGE CHACHKIN: Whatever the testimony is --

7 MR. JOYCE: For three to four days prior to -- this
8 is why I'm having trouble understanding why this is -- Mr.
9 Stone's testimony is improper. The FCC's Mr. Walker testified
10 that for three days prior to inspecting them they monitored
11 that frequency. They heard the same sequence of tones over
12 and over again in the morning, in the afternoon, after they
13 went to dinner, in the evening, at night, and when they
14 approached Mr. Stone and they went back out to their car
15 suddenly that tone sequence stopped. Now, if there's nothing
16 improper about it, then Mr. Stone should have no problem
17 taking the stand and explaining if there's nothing improper
18 about it. But Ms. Laden's point is well taken. If there was
19 improper and excessive testing, then she ought to be able to
20 ask why in the heck did you stop it the moment the FCC
21 investigated? This is so critical, Your Honor, to this case.

22 MR. HARDMAN: Your Honor, Capitol is not even
23 contesting the excessive testing charge.

24 MR. JOYCE: The issue is whether or not it was
25 willful, intentional interference.

1 MR. HARDMAN: Well --

2 MR. JOYCE: And Mr. Raymond was not there. Mr.
3 Stone was there.

4 MR. HARDMAN: Your Honor, if the Government wants to
5 find out about the test setup and, you know, all of that sort
6 of thing, I can guarantee you then that Mr. Stone is not the
7 person to ask.

8 MS. LADEN: Your Honor, we have had a lot of
9 testimony about the test setup. That's not what I'm trying to
10 find out.

11 JUDGE CHACHKIN: Then what are you trying to find
12 out?

13 MS. LADEN: I'm trying to find out whether Mr. Stone
14 had a role in concealing evidence from the FCC inspectors.

15 MR. HARDMAN: Your Honor, there's no evidence that
16 anything was concealed. The inspectors themselves said that
17 the test setup was reconstructed. They have no reason to
18 believe that they didn't get everything disclosed to them that
19 they were interested in. That was Mr. Harrison's, you know,
20 function. I believe it was Mr. Harrison's function, subject
21 to check, but that certainly was the witness' testimony about
22 the reconstruction, the FCC inspector's.

23 JUDGE CHACHKIN: Well, obviously if the Bureau felt
24 it was important for their direct case, they should have
25 called as part of the direct case Mr. Stone as a witness.

1 | There wasn't nothing for him to cross-examine -- for the
2 | Bureau to cross-examine since he didn't put in any direct
3 | case.

4 | MS. LADEN: Well, Your Honor, he is in -- he is the
5 | President and the owner of Capitol.

6 | JUDGE CHACHKIN: Well, I said you should have called
7 | him as your witness, but -- direct case, as part of your
8 | direct case, not said you were going to cross-examine him.
9 | How could you cross-examine him when he didn't put any, any
10 | direct testimony in?

11 | MS. LADEN: I don't believe we said we wanted to
12 | cross-examine him, although I don't remember the exact wording
13 | of the letter. We did say we wanted to examine him in the
14 | letter -- in the notification.

15 | JUDGE CHACHKIN: No. I believe you said you wanted
16 | to cross-examine. Am I wrong, Mr. --

17 | MR. HARDMAN: No, you're not wrong and if they
18 | didn't use the term cross-examine, they certainly did it in a
19 | context of Your Honor's directive that on the 25th of January
20 | the parties were to notify the others of the witnesses they
21 | wanted for cross-examination. So if, if they wanted him for
22 | direct examination they were at least a week late.

23 | JUDGE CHACHKIN: They certainly should have included
24 | as part of their direct case.

25 | MS. LADEN: Your Honor --

1 JUDGE CHACHKIN: They were just going to call him as
2 one of our witnesses, an adverse witness.

3 MS. LADEN: -- he's a, he's a principle of Capitol.
4 He has material evidence. We assumed that they would produce
5 him to testify?

6 JUDGE CHACHKIN: Why? Why did you assume?

7 MS. LADEN: Because he --

8 JUDGE CHACHKIN: You have the burden of proceeding
9 -- the burden of proof. Why did you assume that they were
10 going to produce him?

11 MS. LADEN: Because he has material evidence, Your
12 Honor.

13 JUDGE CHACHKIN: Then you should have -- it's your
14 case. You have to establish -- you have the burden of proof.

15 MS. LADEN: I understand that.

16 JUDGE CHACHKIN: You should have included him as one
17 of your witnesses. They had no obligation to include him as
18 their witness if they don't feel he has material evidence.

19 MS. LADEN: Your Honor --

20 JUDGE CHACHKIN: You're the one who feels he has
21 material evidence. They don't.

22 MS. LADEN: That's why we want, that's why we want
23 him -- we want to call him. We'll call him for direct
24 examination as our witness.

25 MR. HARDMAN: Your Honor --

1 JUDGE CHACHKIN: It's a little late in the game
2 after you've rested your case to call him now for direct
3 examination.

4 MS. LADEN: Well, Your Honor, we asked for him
5 before and you --

6 JUDGE CHACHKIN: You asked him for cross-examination
7 and you couldn't get him for cross-examination since he didn't
8 put in any direct testimony. You should have called him as
9 part of your direct case. In other words, at the time you
10 exchanged your direct case you should have indicated he was
11 one of the witnesses you were going to call as your witness.
12 You didn't do that. That's the fact. You didn't do that.

13 MR. JOYCE: We've also allowed Mr. Hardman to call
14 witnesses out of order, Your Honor.

15 JUDGE CHACHKIN: But the Bureau rested their case.
16 It's a totally different situation, calling witnesses out of
17 order than resting your case.

18 MS. LADEN: Well, Your Honor, I think we can call
19 him as a rebuttal witness since his name has been mentioned
20 here many times.

21 JUDGE CHACHKIN: To rebut what? Is Mr. Stone here
22 in Washington?

23 MR. HARDMAN: No, Your Honor.

24 MR. JOYCE: Well, that's convenient.

25 JUDGE CHACHKIN: Well, it seems to me that the

1 Bureau could probe the questions. Apparently, according to
2 counsel, he knows nothing about the list. He knows nothing
3 about the chaining process and they're prepared to stipulate
4 whether he asked -- he was the one with the record that
5 testing be stopped or not. Now, insofar as you want to
6 develop what was included -- what was in the computer in terms
7 of testing is concerned, I would suggest that you ask
8 management personnel who might know.

9 MS. LADEN: I don't think there's any question. As
10 someone indicated, the test setup was presumably reconstructed
11 during the inspection.

12 JUDGE CHACHKIN: Well, if it was reconstructed and
13 there's no question about the accuracy of it, then what's the
14 problem?

15 MS. LADEN: I didn't say there was no question about
16 the accuracy.

17 JUDGE CHACHKIN: Well, then why don't you ask
18 questions about something if you feel --

19 MS. LADEN: I would like to ask Mr. Stone whether he
20 intentionally deleted it.

21 JUDGE CHACHKIN: But if he deleted it and if, in
22 fact, the reconstruction is exactly the same as was contained
23 in the computer, then what difference does it make?

24 MS. LADEN: We'll never know whether the
25 reconstruction was exact.

1 JUDGE CHACHKIN: Well, you certainly won't if you
2 don't ask any questions about it. That's for sure. And if he
3 knows -- has no knowledge about what was originally contained
4 in the computer, then what's the good of putting Mr. Stone on?
5 Now, they'll stipulate whether or not Mr. Stone was the one
6 who ordered that the testing stop. Now, is there any evidence
7 that anything was deleted from the computer?

8 MR. HARDMAN: No, Your Honor.

9 JUDGE CHACHKIN: Where is there any evidence that
10 anything was deleted from the computer?

11 MS. LADEN: Your Honor, the entire test setup was
12 deleted when the engineers were looking at it.

13 JUDGE CHACHKIN: Is there any evidence to that in
14 this record?

15 MR. JOYCE: Yes. Mr. Walker and Mr. Bogert
16 testified. It's in their report.

17 JUDGE CHACHKIN: I don't, I don't recall any such
18 testimony.

19 MR. JOYCE: It's in their report, Your Honor.

20 JUDGE CHACHKIN: I don't know what's in their report
21 or not. I don't recall any such testimony on this stand
22 stating that, that there was any deletion of any computer
23 material.

24 MS. LADEN: Your Honor, Mr. Walker and Mr. Bogert, I
25 believe, testified --

1 JUDGE CHACHKIN: Not in this hearing they didn't.
2 You'll have to show me where in this hearing they -- that they
3 so testified. Mr. Hardman, are you aware of any such
4 testimony?

5 MR. HARDMAN: No, sir.

6 JUDGE CHACHKIN: Now, if you didn't -- there's no
7 evidence -- as far as I recall there's no testimony in the
8 record that anyone has any knowledge whether there was any
9 material from the computer which was deleted or not.

10 MS. LADEN: Your Honor, Mr. Walker mentions it in
11 his report.

12 JUDGE CHACHKIN: Well, Mr. Walker is going to take
13 the stand again, I assume, on rebuttal and first we'll find
14 out from the witnesses --

15 MR. JOYCE: It's on page 4 of --

16 JUDGE CHACHKIN: Page 4 of what?

17 MR. JOYCE: -- Private Radio Bureau Exhibit No. 3,
18 Your Honor, first paragraph. "He, too," referring to Mr.
19 Harrison, "found that the function, the test function had been
20 disabled and the test pager number erased."

21 JUDGE CHACHKIN: Where's the reference?

22 MR. JOYCE: The first paragraph on page 4.

23 MR. JOYCE: And it says, "Mr. Raymond still had not
24 begun to disclose how the test paging was accomplished."

25 MR. HARDMAN: Well, that's a pretty modest

1 statement, Your Honor. That's a pretty modest statement, Your
2 Honor. The test paging had been disabled. It doesn't say it
3 was deleted and it was then everything -- all the information
4 was reconstructed according to the testimony on the stand.
5 There's nothing that's been deleted, nothing concealed,
6 nothing hidden. It was disabled and then reconstructed.

7 JUDGE CHACHKIN: Well, there's been no testimony --
8 this report went in as something that -- not for the truth of
9 the matters contained herein. It simply went in as showing
10 what transpired, all the events that transpired up to now.
11 The only testimony that went in for the truth was the
12 testimony given by the inspectors when they were on the stand
13 and I don't recall you asking him any questions about --
14 whether there was any evidence established of any deletions of
15 the computer -- in the computer. Now, you'll all have another
16 opportunity of Mr. Walker to question him, but suspicions and
17 conjecture do not make -- are not facts.

18 MS. LADEN: That's why --

19 JUDGE CHACHKIN: If you have any evidence -- first,
20 you haven't established that there was any deletions from the
21 computer program. I don't recall you asking any questions in
22 that regard, but the record will show what it shows. But,
23 again, you'll have Mr. Walker on the stand. You could ask Mr.
24 Raymond whether any deletions from the computer program or
25 anything.

1 MS. LADEN: Mr. Raymond wasn't there, Your Honor,
2 when it happened.

3 JUDGE CHACHKIN: Well, who was there? Mr. Harrison?

4 MS. LADEN: Mr. Stone.

5 JUDGE CHACHKIN: What do you mean Mr. Stone?

6 MR. HARDMAN: I object, Your Honor. If anything, it
7 was the reverse. Mr. Stone wasn't there --

8 MS. LADEN: Yes.

9 MR. HARDMAN: -- and Mr. Raymond was because the
10 report also mentions that Stone left the room.

11 MS. LADEN: I don't believe Mr. Raymond was there,
12 but Mr. Hardman is correct. Mr. Stone left the room just
13 before the test setup was deleted. I believe Mr. Wilson was
14 in the room who we also called as a witness.

15 JUDGE CHACHKIN: Well, Mr. Raymond is here. He
16 could tell you what was in the program and he could tell you
17 whether anything was deleted or not and whether the
18 reconstruction was accurate. He's still available to you to
19 examine on that matter. All right. Let's proceed with
20 examination of this witness.

21 MR. HARDMAN: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. HARDMAN:

24 Q Mr. Peters, would you please open the white book
25 there that says Capitol's Direct Case and look behind Tab 25?
Do you have that, sir?

1 A Yes, I do.

2 Q And do you see a document with the notation in the
3 upper right-hand corner Exhibit CAP 23?

4 A Yes.

5 Q And can you look at that document please very
6 quickly and tell us whether that is your prepared direct
7 testimony in this case?

8 A Yes, it is.

9 Q All right. And you've been in the hearing room over
10 the last several days when the various witnesses from the FCC
11 and RAM have testified as to various incidents of alleged
12 interference and related matters, have you not?

13 A Yes, I have.

14 Q And is the evidence -- the testimony and the other
15 evidence you've heard in this courtroom consistent with the
16 information on which you based your prepared direct --

17 MR. JOYCE: Your Honor, I object. I believe we're
18 entitled to voir dire the witness to determine first of all --

19 JUDGE CHACHKIN: Well, you'll get an opportunity.
20 Go ahead and finish his question. He's just asked him whether
21 it's true, the material, if he wants to make any changes. I
22 don't know what your problem is. Go ahead, Mr. Hardman.

23 BY MR. HARDMAN:

24 Q If I could repeat the question. Is the evidence and
25 other information you have heard given in this courtroom since

1 the preparation of your testimony consistent with the
2 information on which you based your prepared testimony?

3 A Yes, it is.

4 Q All right. And as a result of the evidence and
5 testimony that you've heard in this courtroom, do you have any
6 changes to the conclusions set forth in your prepared direct
7 testimony?

8 A No, I do not.

9 Q And is the testimony true and correct?

10 A Yes, it is.

11 Q All right.

12 MR. HARDMAN: Your Honor, at this time I would move
13 the admission of Exhibit CAP 23, but I do have some additional
14 questions of this witness before passing him for cross-
15 examination.

16 JUDGE CHACHKIN: Any objection?

17 MS. FOELAK: Yes, Your Honor. We have objections to
18 some paragraphs.

19 JUDGE CHACHKIN: Anybody want to engage in voir
20 dire?

21 MR. JOYCE: I do, Your Honor.

22 JUDGE CHACHKIN: Well, anybody else? The Bureau
23 want to engage in voir dire before you state your objection?

24 MS. FOELAK: We don't have any voir dire.

25 JUDGE CHACHKIN: Mr. Joyce, go ahead. This is not